

UNITED STATES DISTRICT COURTS
EASTERN DISTRICT OF WISCONSIN

WILLIAM OTERO,

Petitioner,

v.

Case No. 16-cv-994-pp

UNITED STATES OF AMERICA,

Respondent.

**ORDER DENYING WILLIAM OTERO'S MOTION TO VACATE, SET ASIDE OR
CORRECT SENTENCE (DKT. NO. 1), DECLINING TO ISSUE A CERTIFICATE
OF APPEALABILITY, AND DISMISSING CASE**

On July 29, 2016, the Seventh Circuit Court of Appeals granted William Otero's application to file a second or successive petition and authorized this court to consider his Johnson claim, along with the government's defenses. Dkt. No. 1-1 at 2. The Seventh Circuit assumed that the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015), which held that the residual clause of the Armed Career Criminal Act is unconstitutionally vague, similarly invalidated the residual clause in the career-offender guideline. Dkt. No. 1-1 at 1. On March 6, 2017, the United States Supreme Court issued a decision in Beckles v. United States, 137 S. Ct. 886 (2017), holding that the advisory sentencing guidelines are not subject to vagueness challenges under the Due Process Clause. Beckles forecloses Otero's argument that his sentence violated the Due Process Clause "because it relied on the unconstitutionally vague residual clause of the career-offender" guidelines. Dkt. No. 1 at 5.

The court declines to issue a certificate of appealability, because after Beckles, the petitioner cannot demonstrate that reasonable jurists could debate that the motion should be resolved in a different manner or that issue presented is adequate to deserve further encouragement. 28 U.S.C. §2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004).

The court **DENIES** petitioner's motion to vacate, set aside or correct sentence. Dkt. No. 1. The court **DECLINES TO ISSUE** a certificate of appealability. The court **DISMISSES the** case.

Dated in Milwaukee, Wisconsin, this 27th day of April, 2017.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge